

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERALD THOMAS,

Plaintiff,

Case No. 1:08-cv-744

Hon. Robert J. Jonker

vs.

B. DeBOER, *et al.*,

Defendants.

/

REPORT AND RECOMMENDATION

Plaintiff has filed a § 1983 civil rights action against defendants. In his complaint, plaintiff alleged that while incarcerated at the Standish Maximum Correctional Facility (SMF), defendants Ingraham and DeBoer violated his 1st and 14th Amendment rights “by retaliating against Plaintiff for exercising his 1st Amendment right to petition for redress of grievances,” and that DeBoer threatened to write “phony misconducts” against him. *See* docket nos. 1, 8. This matter is now before the court on plaintiff’s motion for preliminary injunction (docket no. 19), in which he claims that since his transfer to the Ionia Maximum Correctional Facility (ICF) on February 13, 2009, ICF staff has retaliated against him by failing to pick up his legal mail. Plaintiff’s motion names three members of ICF staff: ARUS Kula; RUM Embry and RUO Jameson. Docket no. 19. Plaintiff asks to be returned to SMF. *Id.*

I. Discussion

“The general function of a preliminary injunction is to maintain the status quo pending determination of an action on its merits.” *Blaylock v. Cheker Oil Co.*, 547 F.2d 962, 965 (6th Cir. 1976). In reviewing requests for injunctive relief, the court considers (1) whether the

movant has shown a strong or substantial likelihood or probability of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether the preliminary injunction will cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction. *See Rock & Roll Hall of Fame v. Gentile Productions*, 134 F.3d 749, 753 (6th Cir. 1998). The four factors listed above are meant to be balanced as they guide the court in exercising its discretion; they are not due rigid application and need not be assigned equal weight. *In re Eagle-Pitcher Indus., Inc.*, 963 F.2d 855, 859 (6th Cir. 1992). While a court need not consider any single factor as either indispensable or dispositive, neither is it required to conclude that all four support its decision. The court's discretion is directed at the weight to be given each factor, and the effect to be accorded their mix. Furthermore, the movant bears the burden of persuading the court that the factors weigh in favor of granting a preliminary injunction. *Granny Goose Foods, Inc. v Brotherhood of Teamsters and Auto Truck Drivers Local No. 70 of Alameda County*, 415 U.S. 432, 441 (1974).

A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his burden of proving that the circumstances clearly demand it. *Overstreet v. Lexington-Fayette Urban County Government*, 305 F.3d 566, 573 (6th Cir. 2002); *Fort Wayne Women's Health Organization v. Brane*, 734 F.Supp. 849, 850 (N.D. Ind. 1990). Where a prison inmate seeks an order enjoining state prison officials, this court is required to proceed with the utmost care and must recognize the unique nature of the prison setting. *See Kendrick v. Bland*, 740 F.2d 432, 438, n. 3 (6th Cir. 1984). Courts must accord prison administrators "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Ward v. Dyke*, 58

F.3d 271, 273 (6th Cir. 1995). Correctional officials are professional experts in matters of security and discipline; as such they are better suited to make decisions about security and discipline than are the courts. *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). Moreover, “the operation of our correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial.” *Id.* at 548. For these reasons, a plaintiff attacking administrative decisions about issues of security and discipline must meet a heavy burden.

Plaintiff’s motion fails because he seeks injunctive relief that is unrelated to this lawsuit. Specifically, the retaliation claims alleged in plaintiff’s complaint against defendants Ingraham and DeBoer involve events that are entirely unrelated to the new retaliation claims alleged in his motion for a preliminary injunction against non-parties Kula, Embry and Jameson. While “[a] preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally,” an injunction should not issue when “it deals with a matter lying wholly outside the issues in the suit.” *De Beers Consolidated Mines v. United States*, 325 U.S. 212, 220 (1945). *See, e.g., Kaimowitz v. Orlando, Fla.*, 122 F.3d 41, 43 (11th Cir. 1997) (where a plaintiff brought a *qui tam* action against the city and others for knowingly and improperly obtaining funds from several federal agencies for development or improvement of properties in minority-concentrated areas of city, the plaintiff’s request for preliminary injunction against city ordinance allowing members of public to speak for only five minutes each at conclusion of city council meetings was properly denied because it was of a different character from relief sought and wholly unrelated to issues raised); *Atakpu v. Lawson*, No. 1:05-cv-524, 2006 WL 3803193 at *1-2 (S. D. Ohio Nov. 28, 2006) (the plaintiff prisoner’s motion seeking injunctive relief for harassment and retaliation was denied as unrelated to the prisoner’s complaint, which alleged denial of his

constitutional rights for inadequate medical care; court agreed with the Magistrate Judge's statement that a "court may not grant a preliminary injunction when the issues raised in the motion are entirely different from those raised in the complaint"). Accordingly, plaintiff is not entitled to injunctive relief against Kula, Embry or Jameson.

II. Recommendation

I respectfully recommend that plaintiff's motion for a preliminary injunction (docket no. 19) be **DENIED**.

Dated: October 24, 2009

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be served and filed with the Clerk of the Court within ten (10) days after service of the report. All objections and responses to objections are governed by W.D. Mich. LCivR 72.3(b). Failure to serve and file written objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).